

Enforcement Charter



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Introduction

Planning permission is required for most development in Scotland. Exceptions include some minor works that could be permitted development and works by statutory undertakers (such as utility companies).

The National Park Authority, as the planning authority, has the power to investigate possible breaches of planning control and the discretion to take appropriate remedial action.

Sometimes developers or householders carry out work without the required planning permission or fail to keep to the terms of the permission they have been given. Both of these instances would be considered a breach of planning control.

Applicants are required to tell us when they intend to start building and when works are complete. Building works are checked to ensure that they comply with the approved plans and any planning conditions that apply.

We investigate all allegations of unauthorised land-use, building or engineering operations and always seek to resolve matters informally. Formal enforcement action is a last resort except where serious amenity, environmental or safety issues are raised.

This Enforcement Charter explains how the planning enforcement process works, what role the public can play and what service standards the public can expect. It also explains what happens at each stage of what can be a lengthy, complex process. Breaches of planning control are a matter of public interest and can affect neighbours. We aim to provide a service that is fair, reasonable and responsive to everyone concerned.

Key Points

- The use of enforcement powers should be commensurate with the breach of planning control. For example we are unlikely to take action against a minor breach when there is no adverse impact on the surrounding character or amenity.
- We will normally seek a retrospective planning application in cases where an unauthorised development could be improved or made acceptable by the imposition of planning conditions (such as landscaping, control of operating hours),.
- We will take enforcement action where a breach of planning control is unacceptable and contrary to development plan policies and national planning policy and guidance.
- Enforcement action is not used punitively nor to protect the interests of one person or business over another. Public interest and the provisions of the local plan are always over-riding considerations in assessing whether to take action and for deciding what action to take.

Further information about enforcement can be found in the Scottish Government Circular 10/2009 (www.scotland.gov.uk/Publications/2009/09/16092848/1) and Planning Advice Note 54 - Planning Enforcement (www.scotland.gov.uk/Publications/1999/03/pan54)

What is a Breach of Planning Control?

A breach of planning control is where development occurs without the required planning permission. Possible breaches of planning control include:

- work being carried out without any form of consent
- an unauthorised change of use of land or building
- non-compliance with conditions imposed by a consent
- non-compliance with approved plans

Reporting a Possible Breach of Planning Control

The public play a vital role in reporting breaches of planning control. Members of the public can make preliminary enquiries by telephone but a written note or email is preferable particularly with the following information about the suspected breach of planning control:

- the address of the property or location of land concerned
- the name of the person or company involved
- details of the suspected breach with times and dates if relevant
- how the breach affects you or any problems caused by the breach
- your contact details
- whether you wish the enquiry/complaint to be treated confidentially⁽¹⁾

All enquiries relating to enforcement or possible non-compliance with an approved development should be sent to the **Enforcement Officer** or **Monitoring Officer** at:

Loch Lomond & the Trossachs National Park Headquarters

Carrochan

Carrochan Road

Balloch

G83 8EG

Or by e-mail to planning@lochlomond-trossachs.org.

⁽¹⁾ Please note that, while we will do our best to honour requests for confidentiality, we are subject to freedom of information requests and court orders so cannot guarantee complete confidentiality in all cases, for example, if a case goes to court.

Monitoring of Approved Development

Planning approvals are monitored to ensure compliance with the approved plans and conditions. Applicants should read their planning permission notices carefully as there may be '*pre-start*' conditions to attend to before starting any work; failure to discharge these conditions may invalidate the planning permission. Applicants should also submit the formal Notice of Commencement to us before starting work as failure to do so, or to display a site notice if required to, is a breach of planning control.

Members of the public can also play a role and monitoring enquiries are followed up in the same way as other allegations of unauthorised development.

Establishing the Validity of an Enquiry or Complaint

As a first step we will assess whether the suspected breach is 'valid' in a planning sense. The development may be so minor that we consider it to be '*de minimus*' or of negligible legal importance; or it may be '*permitted development*', that is, development that has deemed approval in terms of the General Permitted Development Order. Alternatively the suspected breach may relate to matters over which we have no control, for instance, neighbour disputes over a boundary position.

Priority Categories of Planning Breaches

Each investigation is assigned a priority category according to the significance of the breach. We receive a large number of enquiries and need to prioritise investigations to ensure an effective service. The priority category is determined by the nature of the breach, the significance of its effects and the relative sensitivity of the site. (Priorities are not influenced by the complainant, the subject of the complaint or the number of complaints received.)

Category A – High Priority

- Works that contravene the requirements of an Enforcement Notice or any continuing breach of planning control where enforcement action has been authorised.
- The unauthorised demolition of, or major alteration to, a Listed Building or the unauthorised demolition of a building in a Conservation Area.
- Unauthorised development that may lead to substantial or permanent damage to sites of international or national importance, such as Sites of Special Scientific Interest or Scheduled Ancient Monuments.
- Unauthorised works to trees protected by a Tree Preservation Order or to trees in a Conservation Area, where trees are likely to be seriously damaged or removed.
- Breaches of residential or holiday occupancy restrictions.
- Unauthorised development that constitutes a serious danger to members of the public.
- Any other breach of planning control, including breaches of conditions, causing, or likely to cause, significant harm to the natural or cultural heritage of the National Park or to residential amenity, for example by reason of noise, smell or other forms of environmental pollution.

Category B – Medium Priority

- Minor breaches of either Listed Building or Conservation Area control.
- Breaches of planning control, including breaches of conditions, having or causing moderate levels of visual impact or disturbance.
- Unauthorised advertisements causing significant visual harm or compromising highway safety.
- Breaches of planning control relating to the unauthorised siting and occupation of residential or holiday caravans.

Category C – Low Priority

- Minor or technical breaches of planning control not affecting amenity
- All other unauthorised advertisements.
- Disputes between neighbours which relate to householder or similar developments and where there is limited public impactUntidy land not affecting public amenity.
- Any other alleged breach of planning control not falling into Category A or Category B.

Response Times to Inquiries

We will acknowledge receipt of all written inquiries or complaints within 5 working days. Telephone inquiries are acknowledged on the day received.

We have set the following target times to make an initial site visit for each priority category:

- **High Priority** 5 working days
- **Medium Priority** 10 working days
- **Low Priority** 15 working days

Within a further 20 working days after our acknowledgement of receipt of an inquiry, we will contact you to provide a brief update on the findings of the investigation and any action proposed, if requested. We understand that someone may simply want to bring a matter to our attention and to leave it to us to deal with without further contact – please advise accordingly. Equally we understand that someone who may be affected by unauthorised development may want more contact and we would endeavour to provide this insofar as is feasible.

Time Limits on Taking Enforcement Action

Planning legislation prevents enforcement action being taken by the planning authority against a breach of planning control in the following instances:

- **Four-year time limit:** No enforcement action may be taken against: erection of a building, engineering work, mining or other operational development, after 4 years of the date on which the operation was substantially completed. Also, enforcement action may not be taken after 4 years following a change of use of a building to a dwellinghouse.
- **Ten-year time limit:** In the case of any other breach of planning control, enforcement action may not be taken after 10 years beginning with the date of the breach. This includes breach of a planning condition and an unauthorised change in the use of land or building (other than change in the use of a building to a dwellinghouse where a four year time limit applies)

The time limits apply only to the initial enforcement action.

Certificates of Lawful Existing (or Proposed) Use or Development

This is a process by which someone can apply to establish whether an existing or proposed use or development is 'lawful' in a planning sense. It can be used by persons seeking formal confirmation for permitted development proposals or by persons wanting to confirm that enforcement action is time-barred.

Rights of Entry for Enforcement Purposes

Our officers have a right to enter land to investigate a potential breach of planning control, to determine whether enforcement action should be taken and to check compliance with any requirement from earlier enforcement action. This right extends to any land, including land adjacent to the site of the breach. It is an offence to wilfully obstruct an authorised person acting in the exercise of a right of entry.

Resolution of Breaches of Planning Control

A relatively small number of cases result in the taking of enforcement action involving service of a formal notice on the landowner or developer. Wherever possible, we will try to resolve breaches of planning control through negotiation as the main purpose of planning enforcement is to resolve problems, not punish mistakes. We have to consider each case on its merits and decide on the best solution; in some instances we may decide that no further action is an appropriate and proportionate response. Retrospective planning applications are considered in the same way as ordinary applications and we may decide to grant, grant with conditions or refuse planning permission.

Enforcement investigations are often complex and contentious and may take a long time. Progress can be delayed for various, often unavoidable, reasons. This can be frustrating for everyone affected and you are welcome to seek an update from us at any point.

Formal Enforcement Action

Formal enforcement action involves the service of a notice and except in emergencies a confidential report is presented to the Planning and Access Committee for authorisation. Formal notices include the following information:

- a description of the breach that has taken place
- the steps that should be taken to remedy the breach
- the timescale for taking these steps
- the consequences of non-compliance with the notice
- the rights of appeal of the recipient

Where a notice is appealed to the Scottish Ministers, it is dealt with by a Reporter from the Scottish Government's Directorate for Planning and Environmental Appeals (DPEA).

Failure to comply with an enforcement notice may result in the planning authority taking further action, including:

- referral to the Procurator Fiscal for possible prosecution
- issue of a fixed penalty notice
- direct action by us to carry out the requirements of the notice and recovery of costs
- a court interdict to stop or prevent a breach of planning control.

Enforcement Register

Copies of formal notices served are kept in an enforcement register available for inspection at the National Park's Headquarters in Balloch. It will shortly be available to view online.

Advertisements

Planning enforcement also deals with the unauthorised display of outside advertisements. Please note however, that any concerns about the content of an advertisement should be raised with the Advertising Standards Authority.

The display of advertisements is controlled by the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 which allows for certain classes of advertisements to be displayed with 'deemed consent'.

Feedback and Complaints about our Service

We will make every effort to provide an excellent service and to follow correct procedures at all times however, if you have a concern about the service you should initially contact our **Planning Information Manager**, who will try to resolve it. Please telephone 01389 722024 or email planning@lochlomond-trossachs.org.

If you remain dissatisfied you can follow the National Parks complaints procedure set out on our website here: www.lochlomond-trossachs.org/looking-after or phone to request a paper copy.

RELEVANT INFORMATION SOURCES

- 1 The Planning etc. (Scotland) Act 2006 – www.oqps.gov.uk/legislation/acts/acts2006/pdf/asp_20060017_en.pdf
- 2 The National Parks (Scotland) Act 2000 – www.opsi.gov.uk/legislation/scotland/acts2000/asp_20000010_en_1
- 3 The Town and Country Planning (Scotland) Act 1997 – www.opsi.gov.uk/acts/acts1997/ukpga_19970008_en_1
- 4 'Development' is defined in Section 26 of the Town and Country Planning (Scotland) Act 1997 as being the undertaking of building, engineering, mining or other operations in, on, over or under land, or the making of any material change of use of buildings or land.
- 5 Town and Country Planning (General Permitted Development) (Scotland) Order 1995 www.opsi.gov.uk/si/si1992/uksi_19920223_en_1.htm
- 6 Town and Country Planning (Use Classes) (Scotland) Order 1997 www.opsi.gov.uk/si/si1997/19973061.htm
- 7 Circular 10/2009 - Planning Enforcement www.scotland.gov.uk/Publications/2009/09/16092848/0